

PUBLIC SERVICE COMMISSION

OF WEST VIRGINIA

CHARLESTON

\* \* \* \* \*

BLUESTONE INDUSTRIES, INC. \* 18-1073-COAL-SC-GI

\* \* \* \* \*

CHESTNUT LAND HOLDINGS, LLC \* 18-1074-COAL-SC-GI

\* \* \* \* \*

KENTUCKY FUEL CORPORATION \* 18-1075-COAL-SC-GI

\* \* \* \* \*

NUFAC MINING COMPANY, INC. \* 18-1076-COAL-SC-GI

\* \* \* \* \*

ORCHARD COAL COMPANY \* 18-1077-COAL-SC-GI

\* \* \* \* \*

HEARING TRANSCRIPT

\* \* \* \* \*

BEFORE: MICHAEL A. ALBERT, Chairman

BROOKS F. MCCABE, Commissioner

RENEE A. LARRICK, Commissioner

HEARING: Tuesday, October 16, 2018

1:02 p.m.

Reporter: Cynthia Piro Simpson

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LOCATION: PSC Howard M. Cunningham Hearing Room  
201 Brooks Street  
Charleston WV

1 A P P E A R A N C E S  
2

3 LINDA BOUVETTE, ESQUIRE

4 Public Service Commission of West Virginia

5 201 Brooks Street

6 P.O. Box 812

7 Charleston, WV 25323

8 Counsel for the Public Service Commission  
9

10 STEPHEN W. BALL, ESQUIRE

11 Chestnut Land Holdings, LLC

12 302 South Jefferson Street

13 Roanoke, VA 24011

14 Counsel for the Chestnut Land Holdings, LLC  
1516 ALSO PRESENT:

17 Greg Birurakis

18 Kathy Dempsey  
19  
20  
21  
22  
23  
24  
25

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## 1 P R O C E E D I N G S

2 -----  
3 CHAIRMAN ALBERT:

4 All right. Before we adjourn, we were  
5 discussing the proceedings involving Chestnut Land  
6 Holdings and Orchard Coal, as well as other proceedings  
7 that are ancillary, that being Kentucky Fuel, Nufac  
8 Mining and Bluestone Industries.

9 The parties asked for the opportunity  
10 to adjourn, and see if there was a basis for a resolution  
11 of these disputes. And we were given a document before  
12 we entered the hearing room, captioned Joint Stipulation  
13 and Settlement Agreement. So I'll ask, Linda, if you  
14 want to tell us about it or how do you want to proceed?

15 ATTORNEY BOUVETTE:

16 I'd like to go through it just  
17 generally first. And then I can put Mr. Birurakis on to  
18 affirm Staff's agreement with the settlement.

19 CHAIRMAN ALBERT:

20 All right.

21 ATTORNEY BOUVETTE:

22 This is a settlement between all five  
23 companies, Bluestone Industries, Chestnut Land, Kentucky  
24 Fuel, Nufac Mining and Orchard Coal Company. And it  
25 settles fees and then states sanctions.

1 The total amount of the sanctions is  
2 \$131,300. And to reach a settlement, we discounted those  
3 fees by 25 percent. We also did the CRTS tonnage fees.  
4 The total that was due by these companies from July 1st,  
5 2015 through June 30th of 2018 was \$38,653.09.

6 There's also a separate settlement  
7 agreement that was reached in 2015 between the  
8 Transportation Division, the CRTS group and Reserve  
9 Resources, representing these companies for some unpaid  
10 tonnage fees. And the remaining due under that  
11 settlement agreement is \$35,012.

12 So the total tonnage fees is  
13 \$73,665.09, which does not include the tonnage fees of  
14 Bluestone Industries. We addressed that later on in the  
15 agreement.

16 So the companies have agreed to pay the  
17 tonnage fees in a total of \$73,665.09. A check is being  
18 delivered to the Commission today for that amount of  
19 money. Arrangements are being made to pick that up.

20 The administrative sanctions, the  
21 payments of the \$98,475, which is the discounted amount,  
22 will be made in two lump sums of \$49,237.50. The first  
23 payment is due in 15 days, or October 31st. The second  
24 payment is due November 29th of 2018. And that would  
25 represent payment in full of the administrative sanctions

1 | that's been imposed, all the fees.

2 And those fees are listed on Exhibit A,  
3 that's attached to the Joint Stipulation. If full  
4 payment is not made by November 29th of 2018, the parties  
5 agree that the entire amount, the \$131,300 will be due  
6 and payable, plus any payment already made. So the  
7 figure is discounted. They don't have to pay the  
8 schedule.

13 CHAIRMAN ALBERT:

16 ATTORNEY BOUVETTE:

17 Chestnut Land has tonnage fees in the  
18 amount of --- \$695.35.

19 CHAIRMAN ALBERT:

20 So you won't be making a calculation  
21 --- you know what that is?

22 ATTORNEY BOUVETTE:

23 Yes.

24 | CHAIRMAN ALBERT:

25 All right.

1

ATTORNEY BOUVETTE:

2

It was Bluestone and Orchard that we were unsure of the tonnage fees. And we've agreed that Orchard was not operating and didn't have the tonnage fee.

6

So once we determine the amount that Bluestone owes, the company will have five business days to pay that amount in full. And failure to do so will terminate the settlement agreement. And any discounted amounts will defer to the full amount owed.

11

The company shall review the CRTS registrations and update it, if it's necessary. The company shall retain their records for a period of three years, as they're required. They shall file their electronic records timely and comply with all other applicable Commission rules and regulations.

17

And we wanted to emphasize that discounting our administrative sanctions is not something that the Commission typically does. And we don't anticipate doing that in the future. But the ability to settle five cases was a --- and a willingness to accommodate to make payments, again, on the CRTS tonnage fees was an incentive to Staff to make that recommendation for the discount.

25

CHAIRMAN ALBERT:

1                   All right.

2                   ATTORNEY BOUDETTE:

3                   The settlement doesn't involve any  
4 current administrative sanctions that are pending now  
5 that have not become final.

6                   CHAIRMAN ALBERT:

7                   That's paragraph nine. That's the  
8 explanation of nine.

9                   ATTORNEY BOUDETTE:

10                  Correct.

11                  CHAIRMAN ALBERT:

12                  Okay.

13                  ATTORNEY BOUDETTE:

14                  And then ---.

15                  CHAIRMAN ALBERT:

16                  So that means this is only the existing  
17 ones. So if there's any in the future, it won't be ---  
18 they won't be affected?

19                  ATTORNEY BOUDETTE:

20                  That is correct.

21                  CHAIRMAN ALBERT:

22                  All right.

23                  ATTORNEY BOUDETTE:

24                  Yes. And I think that's the extent of  
25 it. We would ask that the Commission view it and adopt

1 it. And we would really like to have an order today from  
2 the bench, if possible, since in good faith, the  
3 companies are making that payment of \$73,000 today.

4 CHAIRMAN ALBERT:

5 Well, we don't issue orders from the  
6 bench. But we're willing to give you a --- what we refer  
7 to as bench decrees, bench orders or some such thing.  
8 But we only speak through our orders.

9 But I think certainly that we've looked  
10 at this. And I think it's a reasonable and rational  
11 resolution of disputes on particular fees, with the  
12 undertakings to certainly get right with the Board, if  
13 you will. And on a going-forward basis, to do the --- to  
14 make sure the recordkeeping and the contacts and the  
15 filings, and so forth are made as required.

16 Do you want to put your witness on  
17 or ---?

18 ATTORNEY BOUVETTE:

19 Yes, Mr. Birurakis.

20 -----  
21 GREG BIRURAKIS, HAVING FIRST BEEN DULY SWORN, TESTIFIED  
22 AS FOLLOWS:

23 -----  
24 DIRECT EXAMINATION

25 BY ATTORNEY BOUVETTE:

1 Q. Mr. Birurakis, have you had an opportunity to  
2 view the Joint Stipulation and Settlement Agreement?

3 A. Yes.

4 Q. And do you have a copy of that with you?

5 A. Yes.

6 ATTORNEY BOUVETTE:

7 Your Honor, we would like to identify  
8 the Joint Stipulation and Settlement Agreement as Staff  
9 Exhibit 1.

10 CHAIRMAN ALBERT:

11 We already have a Staff Exhibit 1 in  
12 most of these.

13 ATTORNEY BOUVETTE:

14 Okay, so ---.

15 CHAIRMAN ALBERT:

16 You want to call it --- how about we  
17 call it Joint Exhibit 1.

18 ATTORNEY BOUVETTE:

19 Joint Exhibit 1 sounds good.

20 (Joint Exhibit 1 was marked for  
21 identification.)

22 CHAIRMAN ALBERT:

23 All right.

24 BY ATTORNEY BOUVETTE:

25 Q. Did you have involvement in negotiation,

1 preparation and finalization of this document?

2 A. Yes.

3 Q. Does it represent what the parties agree to?

4 A. Yes.

5 Q. Does it represent a reasonable compromise of the  
6 administrative sanctions that the Commission has imposed?

7 A. Yes.

8 Q. Do you recommend to the Commission that they  
9 approve the Joint Stipulation and Settlement Agreement as  
10 a resolution of all five cases?

11 A. I do.

12 Q. Do you believe that the resolution, as  
13 recommended in the stipulation, is fair and reasonable  
14 and promotes the public interest?

15 A. I do.

16 ATTORNEY BOUVETTE:

17 Okay. I have no further questions.

18 CHAIRMAN ALBERT:

19 All right. Mr. Birurakis, I don't have  
20 any further questions of you. Thank you, sir.

21 Mr. Ball, you're not a witness. But as  
22 counsel for the Bluestone, Chestnut, Kentucky Fuel, Nufac  
23 and Orchard, you've heard the discussion by Staff and the  
24 witness about the nature of the Joint Stipulation and  
25 Agreement for Settlement. Do you agree with the proposed

1 settlement?

2 ATTORNEY BALL:

3 Yes, sir.

4 CHAIRMAN ALBERT:

5 All right. And it's your intention or  
6 your parties' intention --- that your clients will agree  
7 to this or to abide by the --- you had the authority to  
8 execute this, did you not?

9 ATTORNEY BALL:

10 That's correct.

11 CHAIRMAN ALBERT:

12 And it's your intention to have or  
13 request that your clients abide by all provisions of  
14 this?

15 ATTORNEY BALL:

16 Yes, sir.

17 CHAIRMAN ALBERT:

18 All right. Do you think it's a  
19 reasonable and rational settlement of these disputes?

20 ATTORNEY BALL:

21 Yes, sir.

22 CHAIRMAN ALBERT:

23 All right. Okay. I don't think we  
24 have anything further.

25 We will indicate from the bench now

1 that we will probably not enter an order at this time.  
2 But that as we go forward, assuming that all the terms  
3 and conditions that are laid out in here, and payments  
4 are made in a timely fashion, that we will simply enter  
5 an order at some point in the near future. And probably  
6 immediately after the payment of the last of the sum due  
7 dismissing these proceedings as an agree to settle, if  
8 that's okay with you, the way to handle it?

9 ATTORNEY BALL:

10 That's acceptable with us.

11 CHAIRMAN ALBERT:

12 We have the matter involving the  
13 hearing for tomorrow, which would be I guess the last of  
14 tour clients, Bluestone Industries. I see no reason to  
15 move forward with that. So we'll defer our proceeding in  
16 that matter pending the further resolution of the Joint  
17 Stipulation and Agreement. Is that right?

18 ATTORNEY BALL:

19 That's right. Yes, sir.

20 CHAIRMAN ALBERT:

21 Okay. I don't know that we need to put  
22 all the exhibits in at this time. We'll just proceed  
23 with --- let's hope we don't need to put them all in.  
24 But if at some point in the future we need to do that,  
25 we'll do so. In the meantime, I think that --- unless

1 you all feel that we need to.

2 ATTORNEY BOUVENTTE:

3 No, Your Honor.

4 CHAIRMAN ALBERT:

5 Okay. Well, then, we will accept the  
6 Joint Stipulation and Settlement Agreement as having been  
7 filed in the proceedings. And we'll give you a strong  
8 indication that there's every reason to expect us to  
9 approve that Joint Stipulation and Settlement Agreement  
10 upon the conclusion of all the terms and conditions.

11 And I want to thank the parties. These  
12 are not easy to come about. I know that it took a lot of  
13 work on your part. And we appreciate your effort to get  
14 this thing --- this matter resolved. And let's move  
15 forward to get this thing finalized and off our docket.  
16 Thank you very much.

17 ATTORNEY BALL:

18 Thank you.

19 CHAIRMAN ALBERT:

20 All right. We're adjourned.

22 \* \* \* \* \*

23 HEARING CONCLUDED AT 1:25 P.M.

24 \* \* \* \* \*

1

## CERTIFICATE

2

3 I hereby certify, as the stenographic reporter, that  
4 the foregoing proceedings were taken stenographically by  
5 me, and thereafter reduced to typewriting by me or under  
6 my direction; and that this transcript is a true and  
7 accurate record to the best of my ability.

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Dated the 29th day of October, 2018

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Court Reporter

Cynthia Piro Simpson